

Judiciary and Civil Jurisprudence: Interim Charge 2

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Interim Charge 2: Study opportunities to modernize and improve local and statewide data collection throughout the criminal justice system in Texas, including improving the collection and reporting of court records, to promote transparency and ensure uniform data collection processes.

NAMI Texas is a nonprofit 501(c)3 organization founded by volunteers in 1984. We are part of the nation's largest grassroots mental health organizations and we exist to help improve the quality of life for individuals with mental illness and their families. Around the state, we have 27 local NAMI affiliate organizations and approximately 2,000 members.

The State of Mental Health Care for Justice-Involved Individuals

More 5 million adult Texans are living with a mental illness.¹ Roughly 1.8 million adult Texas have a substance use condition that causes significant clinical impairment.² Individuals with an untreated mental health or substance use concerns are 8x more likely to be incarcerated.³ In 2015, an estimated 30% of jail inmates have one or more SMIs, which equates to nearly 20,000 Texans.³ The prevalence of SMI in county jails is likely currently much higher due to population growth and worsening mental health workforce shortages.⁴

Unfortunately, only 38% of jail inmates experiencing mental illness receive the appropriate services.⁵ Of those, only 30% receive psychiatric medications. The consequences of providing inadequate treatment to inmates living with SMI include increased risk of exploitation, neglect, and isolation, which can worsen mental health outcomes and increase risk of homelessness, emergency service utilization, substance use, and recidivism upon prison or jail exit.⁶

¹ Mental Health America of Greater Dallas. (2014). *Texas Mental Health Numbers: Community-Based Services*. Retrieved from <https://www.mhadallas.org/wp-content/uploads/2014/12/TEXAS-MENTAL-HEALTH-NUMBERS.pdf>

² Statewide Behavioral Health Coordinating Council. (2019). Texas Statewide Behavioral Health: Fiscal Years 2017-2021 Strategic Plan Update and the Foundation for the IDD Strategic Plan (2nd ed.). *Texas Health & Human Services*. Retrieved from <https://hhs.texas.gov/reports/2019/02/statewide-behavioral-health-strategic-plan-update-idd-strategic-plan-foundation>

³ House Select Committee on Mental Health. (2016). Interim Report to the 85th Legislature. *Texas House of Representatives*. Retrieved from <http://www.houstontx.gov/txlege/static/documents/hb1486/12-2016-Mental-Health-Select-Committee-Interim-Report.pdf>

⁴ Hogg Foundation for Mental Health. (2018). *Public Behavioral Health Services in Texas*. Retrieved from <https://hogg.utexas.edu/wp-content/uploads/2018/11/Public-Behavioral-Health-Services-in-Texas.pdf>

⁵ Bureau of Justice Statistics. (2017). *Indicators of mental health problems reported by prisoners and jail inmates, 2011-12*. Retrieved from https://www.bjs.gov/content/pub/pdf/imhprpji1112_sum.pdf

⁶ Zgoba, K., Reeves, R., Tamburello, A., & Debilio, L. (2020). Criminal Recidivism in Inmates with Mental Illness and Substance Use Disorders. *Journal of the American Academy of Psychiatry and the Law Online*, 48(2). DOI: 10.29158/JAAPL.003913-20

Inadequate mental health care in jails and prisons disproportionately impacts communities of color and the poor. Black men and women are six times and two times more likely to be incarcerated than the White men and women, respectively.⁷ Formerly incarcerated individuals are almost ten times more likely to be homeless than the general public, with rates of homelessness increasing with number of incarcerations, recency of release, and gender and ethnicity.⁸ Further, incarceration exacerbates inequities in employment, housing, and relational dynamics, increasing risk of recidivism.⁹

In addition to the human cost, the consequences of providing inadequate mental health care to justice involved individuals has fiscal implication for the state. Inmates living with mental illness often serve longer sentences due to repeated rule violations and verbal or physical altercations with jail staff or other inmates.¹⁰ Currently, county jails house roughly 65,000 inmates in Texas at an average cost of \$59 per day.^{11, 12} If 30% of jail inmates are living with a mental illness, Texas spends \$1.15 million for each additional day of incarceration. In addition to jeopardizing staff safety, lengthier inmate sentences contribute to high turnover rates for jail staff.¹³

The Importance of Better, Smarter Data in Criminal Justice

Inadequate and inefficient data collection, standardization, and reporting is a significant obstacle in the delivery of mental health services to justice-involved individuals living with mental illness. Thankfully, a shift from “tough on crime” to “smart on crime” initiatives have contributed to improvements in the delivery of mental health services. For example, the expansion of mental health and drug courts in Georgia has contributed to a decrease in crime and incarceration across the state.¹⁴ Referrals to mental health and drug courts hinge on the data collected by peace officers and jailers.

In addition to collection, data standardization is an essential element in improving the care provided to those living with mental illness. Data standardization ensures that data is consistent, reliable, and comparable, to improve efficiency and efficacy in the delivery of pre-

⁷ Carson, E. (2014). *Prisoners in 2013*. United States Department of Justice: Bureau of Justice Statistics. Retrieved from <https://www.bjs.gov/content/pub/pdf/p13.pdf>

⁸ Couloute, L. (2018). *Nowhere to go: Homelessness among formerly incarcerated people*. Prison Policy Initiative. <https://www.prisonpolicy.org/reports/housing.html#raceandgender>

⁹ Blankenship, K., del Rio Gonzalez, A., Keene, D., Groves, A., & Rosenberg, A. (2018). Mass incarceration, race inequality, and health: Expanding concepts and assessing impacts on well-being. *Social Science & Medicine*, 215, 45-52

¹⁰ Bureau of Justice Statistics. (2006). *Special Report: Mental Health Problems of Prison and Jail Inmates*. Retrieved from <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>

¹¹ Texas Commission on Jail Standards. (2020). *Abbreviated Population Report for 10/01/2020*. Retrieved from <https://www.tcjs.state.tx.us/wp-content/uploads/2020/10/AbbreRptCurrent.pdf>

¹² Texas Criminal Justice Coalition. (2016). *Travis County, Texas: Adult Criminal Justice Data Sheet*. Retrieved from https://www.texascjc.org/system/files/publications/Adult%20Travis%20County%20Data%20Sheet%202016_0.pdf

¹³ Galvin, G. (2017). Underfunded, Overcrowded State Prisons Struggle with Reform. *U.S. News & World Report*. Retrieved from <https://www.usnews.com/news/best-states/articles/2017-07-26/understaffed-and-overcrowded-state-prisons-crippled-by-budget-constraints-bad-leadership>

¹⁴ The Associated Press. (2018, February 22). *Georgia's Top Judge Applauds Criminal Justice Reform Success*. Retrieved from <https://www.seattletimes.com/nation-world/georgias-top-judge-applauds-criminal-justice-reform-success/>

and post-booking mental health services. According to a report published by the Harvard Kennedy School, the utilization of nonsystematic data to inform the development and implementation of mental health programs for justice-involved individuals may amplify existing inequities in care delivery.¹⁵

Finally, consistent data reporting is essential to improve transparency in the delivery of care for justice-involved individuals living with mental illness. The publication of complete, accurate, and timely information can help stakeholders to identify successes and setbacks in the delivery of mental health services, improve inmate and jail staff safety, and increase public confidence in the restoration processes provided to those most in need.¹⁶ Further, improved transparency will help criminal justice agencies to identify areas of potential cost savings, reducing the fiscal burden placed on the state.

Policies to Improve Data Collection and Reporting

To improve the care provided to justice-involved individuals living with mental illness, Texas must promote improved data collection and reporting of pre-booking jail diversion, greater communication between criminal justice agencies, and enhanced uniformity in statewide reporting protocols.

Improved Data Collection and Reporting of Pre-Booking Jail Diversion—Article 16.23 of the Texas Code of Criminal Procedure requires law enforcement agencies to make good faith efforts in diverting individuals experiencing a mental health or substance use crisis to community-based treatment. Community-based jail diversion programs have been shown to improve mental health outcomes, reduce criminal justice involvement, and lower costs associated with unnecessary law enforcement, hospital, and crisis service utilization.¹⁷ Unfortunately, inadequate and inconsistent reporting of jail diversions prevents monitoring of diversion practices and assessment of program effectiveness. In order to improve pre-booking jail diversion, Texas should amend Article 2 of the Texas Code of Criminal Procedure to provide clear instruction to peace officers on data collection and reporting related to mental health diversion and establish guidelines for diversion data compilation, analysis, and reporting by law-enforcement agencies.

Enhance Data Collection and Communication in Municipal Jails—Article 16.22 of the Texas Code of Criminal Procedure requires sheriffs and jailers to provide notice to the magistrate within 12 hours of receiving information that may indicate an inmate is living with mental illness. The notice must include information regarding the defendant's behavior immediately before, during, or after the arrest. Unfortunately, information gathered by peace officers is

¹⁵ Chien, C., & Tashea, J. (2018). Better Data and Smarter Data Policy for a Smarter Criminal Justice System. *Harvard Kennedy School: Shorenstein Center on Media, Politics, and Public Policy*. Retrieved from <https://ai.shorensteincenter.org/ideas/2018/12/10/better-data-and-smarter-data-policy-for-a-smarter-criminal-justice-system-system>

¹⁶ Geraghty, S., & Velez, M. (2011). Bringing Transparency and Accountability to Criminal Justice Institutions in the South. *Stanford Law & Policy Review*, 22(2), 455-488. Retrieved from https://law.stanford.edu/wp-content/uploads/2018/03/geraghty_velez.pdf

¹⁷ Meadows Mental Health Policy Institute. (2016, February 10). *Texas Mental Health Landscape – Brief Overview*. Retrieved from <https://www.texasstateofmind.org/wp-content/uploads/2016/02/Brief-Overview-of-Landscape.pdf>

inconsistently shared with jail staff, which may delay reporting of a suspected mental illness to the magistrate and hinder the delivery of mental health services. To improve the consistency and continuity of care provided to justice-involved individuals living with mental illness, Texas should amend Article 2 of the Texas Code of Criminal Procedures to require peace officers to communicate mental health-related information to jail staff at jail booking.

Establish Uniform State Reporting Protocols for Early Identification Interviews—Early identification interviews are essential in ensuring that individuals with mental health concerns are able to access the appropriate mental health services. However, there is no uniform system for reporting this vital information to the state. Inadequate and inconsistent statewide reporting on the number of mental health screenings conducted, location of those screenings, and screening outcome hinders monitoring of law implementation and efficacy. In order to improve transparency in the assessment and provision of behavioral health services to inmates, Texas should amend Section 511 of the Government Code to require the Texas Commission on Jail Standards to develop uniform state-wide data practices that promote improved consistency and timeliness in service delivery, including the number of completed mental health screenings, 16.22 magistrate notifications, and completed mental health assessments, in addition to data on location, method, out outcome of assessment.

Conclusion

Individuals living with mental illness are more likely to interface with the criminal justice system. Unfortunately, inadequate and inefficient data collection, standardization, and reporting create barriers in the delivery of mental health services. To improve the care provided to justice-involved individuals living with mental illness, Texas must promote improved data collection and reporting of pre-booking jail diversion, greater communication between criminal justice agencies, and enhanced uniformity in statewide reporting protocols.